IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2761 of 2003
with
SPECIAL CIVIL APPLICATION No 2762 of 2003
with
SPECIAL CIVIL APPLICATION No.2764 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALSAD SARVAJANIK KELAVANI MANDAL
Versus
APPELLATE AUTHORITY

Appearance:
1. Special Civil Application No. 2761 of 2003
MR HRIDAY BUCH for Petitioner No. 1
MR AD DESAI for Respondent No. 1
MS.FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1,2
RULE SERVED for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 3
2. Special Civil Application No. 2762 of 2003
MR HRIDAY BUCH for Petitioner No. 1
MR AD DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/05/2004

COMMON ORAL JUDGEMENT

These petitions are filed challenging the orders passed by the appellate authority under Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"), whereby the appellate authority was pleased to dismiss the appeal filed by the present petitioner, Shri Valsad Sarvajanik Kelavani Mandal and was pleased to confirm the order passed by the controlling authority under the Act, asking the petitioner to pay the amount mentioned in the order, to the concerned teacher by way of gratuity with 10% simple interest till the amount of gratuity is not paid.

2. Mr.Hriday Buch, the learned advocate appearing for the petitioner (in all these matters) relied upon the judgement of the Full Bench of this Court in the matter of Shantiben L. Christian Vs. Administrative Officer, Ahmedabad Municipal School Board, reported in 2001 (2) GLR 1626, which is confirmed by the Honourable the Apex Court in the matter of Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and others, reported in (2004) 1 SCC 755 and submitted that the order of the controlling authority as well as the appellate authority under the Act are not legal.

3. Mr.A.D. Desai, the learned advocate appearing for the concerned teacher submitted that it may be clarified that the observations made in para 16 of the concurring judgement of the Honourable Mr.Justice J.N. Bhatt, which read as under:

"Since this petition is being disposed of only on the sole question about the petitioner, who is a teacher, being not an 'employee' and therefore, being not covered under the Act and the question of applicability of the Act as such and in the alternative interpretation of the amended portion of clause 'e' of section 2 of the Act which reads, ".. .. but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity." and subsection (5) of section 4 of the Act has not been gone into and therefore, they kept open in this reference."

will be applicable to the case of the petitioner. No such clarification is required because when the matter is disposed of relying upon a judgement of the Full Bench, the whole judgement including the aforesaid observations will have the application to the case of the petitioner also, in accordance with law.

4. The present petition is in a narrow compass. The validity and legality of the orders of the controlling authority as well as that of the appellate authority under the Act is under challenge. The question is answered on the basis of the aforesaid judgement and hence the observations made therein will also be applicable to the case of the petitioner. As and when the teacher takes recourse to any remedy remedy available to him, he can always rely upon the said observations.

5. In the result the petitions are allowed. The judgements and orders of the controlling authority as well as the appellate authority under the Payment of Gratuity Act, 1972 are hereby quashed and set aside. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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